IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 791 OF 1992

Union of India ..Appellants

versus

M/s. Daguji Bhaurao ..Respondents

Mr. A. N. Samant for the Appellants.

Mr. G. J. Mohan Rao for the Respondents.

CORAM: D.G.DESHPANDE,J.

DATED: 4TH MAY, 2005

ORAL ORDER :

1. Heard learned counsel for the parties.

2. This Appeal is filed by the Union of India - Appellants against the order of the RACT, Mumbai dated 23.1.1992.

3. Mr. Samant raised only two contentions. Firstly, according to him the RR issued by the Railway was "said to contain". The second contention was that the Tribunal awarded interest at the rate of 10% per annum

and according to him it should be 9% per annum in view of the Judgment of this Court reported in **2005(1) Mh.L.J. 165 Maharashtra State Electricity Board vs. Union of India.** It was a claim against the Railways and the interest was awarded ultimately by the High Court at 9% per annum. I had also followed same judgment earlier, therefore the rate of interest is required to be reduced to 9% per annum. Therefore, he contended that firstly the appeal should be allowed so far as claim on merits is concerned, or alternatively interest rate should be reduced.

4. So far as contention of Mr. Samant of RR with the endorsement "said to contain", the same is required to be rejected.

5. A consignment containing 401 bags of onions booked on 5.1.1977 was delivered at destination on 26.1.1977. However, when the goods arrived at the destination they were found in damaged condition, deteriorating, giving bad smell, etc. Though the entire consignment was damaged,, assessment in respect of 231 bags was not considered. Inspite of the claim made by the respondents, the appellants did not pay the money, hence suit / application came to be filed.

6. The Tribunal framed as many as 12 issues but the issue regarding RR "said to contain" was not at all framed. The Tribunal found that there was total negligence of the railway. Therefore, in the circumstances the defence of "said to contain" is not available to the appellants.

7. So far as interest part is concerned, contention of Mr. Samant is required to be accepted in view of the judgment of this court, as stated above.

8. In the result, I pass the following order:

ORDER

. The appeal is partly allowed.

. The principal amount awarded will carry interest at the rate of 9% per annum from the date of application till realisation or till date of payment or deposit with proportionate costs.

. Amount that is found in excess after the aforesaid calculations shall be returned to

the appellants. Respondents will be permitted to withdraw the amount as per the calculations.

. No order as to costs.

. Appeal disposed of along with Civil Application.

4.5.2005 (D.G. DESHPANDE,J.)